

**BOARD OF APPEALS**  
**for**  
**MONTGOMERY COUNTY**  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6700

**Case No. CBA-1587-A**

**PETITION OF GEORGETOWN PARK ASSOCIATES LP**

**OPINION OF THE BOARD**

Hearing held December 19, 2001

Effective date of Opinion: February 28, 2002

Case No. CBA-1587-A is an application to modify a special exception for a Clinic pursuant to Section 59-G-2.14 of the Zoning Ordinance to permit an existing shed on the property. Board's review is limited to those aspects of the special exception which Georgetown Park Associates LP (the applicant or the Clinic) seeks to modify.

Steven Karr, an architect, testified on behalf of the applicant. There was no opposition to the proposed modification.

Decision of the Board:                      Special Exception Modification **Granted**,  
Subject to conditions enumerated below.

**EVIDENCE PRESENTED TO THE BOARD**

1. The subject property consists of approximately 3.87 acres and is located at 5401 West Cedar Lane, Bethesda, Maryland in the RE-60 zone. The site has approximately 400 feet of frontage along West Cedar Lane.
2. The surrounding neighborhood contains a mixture of residential and institutional land uses. Adjoining the subject property to the east and northeast are single-family homes in the R-60 zone. Adjoining the site to the northwest is the American College of Cardiology which operates by special exception in the R-60 zone. Adjoining to the west is a Knights of Columbus facility in the R-60/TDR zone and a WSSC water tower in the R-60 zone. Confronting to the south, across West Cedar Lane, is the National Institutes of Health campus in the R-60 zone.
3. The medical Clinic has operated by special exception on the property since 1964. Its offices are located in three rows of colonial style buildings, each two stories in height. A large parking facility serves the Clinic with one entrance off West Cedar Lane.
4. The applicant seeks to modify the special exception to include an existing accessory storage building (a shed) which is used for maintenance equipment and supplies. The shed protects grounds maintenance equipment, including lawn mowers, snow blowers, wheelbarrows, and other tools from the elements. It also stores grounds maintenance supplies including grass seed and bagged mulch as well as supplies for the maintenance and incidental repairs of the buildings. Two maintenance employees currently on site will utilize the building as necessary.
5. The shed is 12 feet wide and 14 feet long and has a height of nine feet eight inches. It is painted green in color with a gray asphalt roof, and is depicted in photos submitted by the applicant (Exhibit 5b). It is located at the northwest corner of the existing paved parking facility, has a footprint of approximately 300 square feet, and is depicted in the site plan submitted by the applicant (Exhibit 4b). The shed has the same setbacks as the parking facility. It is 10 feet from the western property line and 22 feet from the northern property line. The shed is screened by painted masonry wall on the northern and western edges of the paved area, and by dense trees.
6. The shed does not increase the intensity of the Clinic's activities, nor does it generate any significant additional traffic.
7. The Bethesda-Chevy Chase Master Plan covering the property supports the existing R-60 zone for the subject property and medical clinics are allowed by special exception in that zone. The property is shown on the Master Plan as containing an office use.
8. The Maryland-National Capital Park and Planning Commission (M-NCPPC) reviewed the proposed modification of the special exception and recommended approval of the application.

9. M-NCPPC Technical Staff determined that the shed is exempt from the requirements of the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) because the original special exception use was approved prior to July 1, 1991 and because the modification does not result in the clearing of more than 5,000 square feet of forest.

## FINDINGS OF THE BOARD

### GENERAL STANDARDS

The proposed modification meets the requirement set forth in Section 59-G-1.2.1, specifically:

*59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.*

The existing shed is screened by existing painted masonry walls and dense trees. Therefore it will have no adverse effects on nearby properties and the general neighborhood.

The proposed modifications meet the general conditions set forth in Section 59-G-1.21, specifically:

- (a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

- (1) *Is a permissible special exception in the zone.*

Because the shed is part of the Clinic special exception permitted in the R-60 zone, it is permissible in the zone.

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The Clinic with a shed complies with the standards and requirements set forth in Section 59-G-2.14 of the Zoning Ordinance.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Because the Clinic with a shed is consistent with the Bethesda-Chevy Chase Master Plan it is consistent with the general plan for the development of the district..

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Because approval of the shed will not increase the number of medical practitioners or patients, and because the shed will be used only by two existing maintenance employees, it will not affect population density or intensity of activity, traffic or parking. The shed is relatively small and is situated in an unobtrusive corner of the subject property and its design is in harmony with the general character of the neighborhood. The shed complies with all applicable height and lot coverage restrictions, hence the scale and bulk of the modification is also in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Approval of the modification will be subject to the submitted site plan and landscaping plan and the modification will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The proposed modification will have none of these effects.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The modification will not adversely affect the residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The modification will not have any effect on the area or its residents, and will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

The modification will not require any additional public services or facilities for the subject property.

## **SPECIFIC STANDARDS**

The modification complies with the standards and requirements set forth for the use in Section 59-G-2.14, specifically:

- (a) *Development standards are as follows:*

- (1) *Minimum lot area: 40,000 square feet.*
- (2) *Minimum frontage: 200 feet*
- (3) *Minimum setback from all property lines: 40 feet, except that the setbacks may be reduced if found to be compatible within an historic district as set forth in Sec. 59-A-6.23.*
- (4) *Maximum building height: as specified in the zone.*
- (5) *Maximum lot coverage: 15 percent.*

The existing shed does not affect the conformance of the existing medical Clinic with the development standards.

- (b) *The property must front on and have direct access to a public road built to arterial or higher standards: except that access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds this access to be appropriate and not detrimental to existing residential uses on that primary street.*

The existing shed does not affect the existing access to the Clinic from West Cedar Lane.

- (c) *Any accessory service that is part of the clinic, including a laboratory or pharmacy for use by patients of medical practitioners in the clinic, must comply with the following standards:*
- (1) *Direct access from the street is prohibited; any access must be from an interior lobby or hallway or from a parking area that does not front on a public street.*
- (2) *Hours of operation must be no earlier and no later than those of medical practitioners in the clinic.*

Accessory services connected with the special exception will not be affected by the existing shed.

- (d) *Adequate parking must be provided on site in accordance with the requirements for a medical or dental clinic, as stated in article 59-E, and further limitations, if any, prescribed by the Board.*

The existing shed does not affect the provision of adequate parking on site.

- (e) *The Board may limit hours of operation, numbers of practitioners and employees, and the number, character and extent of accessory services.*

The existing shed does not result in any changes to the hours of operation, numbers of practitioner, employees, or provisions of accessory services

- (f) *In approving a modification of the petition as previously approved, the board must find that the use at the location in question will not be detrimental to the surrounding residential community because of traffic, noise or physical activity and will not adversely affect the present character or future development of that community as a residential area.*

Because the shed is relatively small, is located on an unobtrusive corner of the property, and is adequately screened, neither the design nor the location of the shed will result in any adverse effect on the nearby residential area.

The Board **grants** the application for the proposed modification to the special exception, subject to the following condition:

1. Petitioner shall be bound by all of its testimony and exhibits of record and the testimony of its witnesses, to the extent that such testimony and representations are identified in the Board's opinion granting the special exception modification.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Donna L. Barron, Louise L. Mayer, and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 28th day of February, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the Zoning Ordinance). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.